

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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**Appeal No. 2015AP2636
STATE OF WISCONSIN**

Cir. Ct. No. 2013CV169

**IN COURT OF APPEALS
DISTRICT IV**

JAMES JORDAN AND DONNA JORDAN,

PLAINTIFFS-APPELLANTS,

V.

JOLENE WILLE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dodge County:
STEVEN G. BAUER, Judge. *Affirmed.*

Before Lundsten, Sherman, and Blanchard, JJ.

¶1 PER CURIAM. James and Donna Jordan appeal a judgment dismissing their complaint alleging statutory misrepresentation in connection with the sale of a parcel of farm land by Jolene Wille. Dismissal was based on jury verdicts finding that, while Wille made a misrepresentation that her real estate

broker, Beverly Anderson, then repeated to the Jordans, no damages resulted to the Jordans from the misrepresentation. The alleged misrepresentation involved how many acres of the transferred parcel were “tillable.”

¶2 The Jordans make the following arguments: (1) the circuit court erroneously exercised its discretion at trial by overruling a relevancy objection to the admission of evidence offered by Wille, consisting of a state agency’s definition of the word “tillable;” (2) the court erred in denying a pretrial motion to dismiss the third-party complaint that Wille filed against Anderson; and (3) there was insufficient evidence to support the verdict that the Jordans did not suffer monetary loss as a result of their reliance on the alleged misrepresentation regarding the number of tillable acres. We affirm the judgment for reasons discussed below.¹

BACKGROUND

¶3 The parties do not dispute the following pertinent facts. The Jordans purchased farm land from Wille. Wille used Anderson as her real estate agent in the transaction. Before making their offer to purchase, the Jordans had access to a Multiple Listing Service (“MLS”) real estate listing data sheet, produced by Anderson, describing the parcel that Wille offered for sale. The top of the MLS sheet described the parcel as consisting of a total of about 80 acres, 44 of which were represented to be “tillable.”

¹ Because we reject the arguments of the Jordans on other grounds, we have no reason to address Wille’s arguments based on mootness.

¶4 The Jordans argued at trial that they based their offer to purchase on the expectation that the parcel included 44 tillable acres, as stated at the top of the MLS sheet. In fact, the Jordans alleged, the parcel had only 37.1 tillable acres, because approximately seven acres of the parcel was good for growing only “marsh hay,” which the Jordans contend is not tillable. In the end, the main dispute at trial came down to whether it was reasonable for the Jordans to expect that they were getting 44 tillable acres, not counting the seven acres of marsh hay land.²

¶5 We pause briefly to clarify terminology and concepts not in dispute in this appeal about marsh hay and the land on which it grows. In addressing the topic of tillable acreage, the parties in arguments to the circuit court and to the jury, as well as now on appeal, have used the following sets of terms more or less

² We now describe a smaller dispute not directly involving the topic of marsh hay land, but instead involving a reference to 42 acres as opposed to 44 acres, in an attempt to avoid complicating our description of the main dispute in the text. We make further reference to the 44-acre/42-acre discrepancy in the discussion section of this opinion below. However, to repeat, the main dispute in this appeal involves the difference between 44 tillable acres and 37.1 tillable acres (*i.e.*, 44 with, and 37.1 without, seven acres of marsh hay land), and not the difference between 44 and 42.

Although, as we have noted, the top of the MLS sheet stated 44 tillable acres, the bottom stated “42 tillable acres; 5 acres marsh hay.” At trial, James Jordan testified that, at the time he made the offer to purchase on behalf of himself and his wife, he read the 44 acre reference but did not notice the 42 acre reference. He also testified that he did not consider land that grows only marsh hay to be tillable. On this basis, the Jordans took the position with the jury that the only misrepresentation at issue is the 44 tillable acres that the Jordans expected to get, versus the 37.1 tillable acres that were actually on the transferred parcel.

For her part, Wille argued to the jury that if one combines the 37.1 acres that the Jordans acknowledge was tillable with the seven acres of marsh hay that Wille argued was tillable, the result exceeds 42 tillable acres, which matches the statement at the bottom of the MLS sheet. On this basis, Wille argued that there was, at worst, a minor inaccuracy on the MLS sheet due to the discrepancy between the 44 and 42 tillable acres that were listed in different places on the MLS sheet.

interchangeably: “marsh hay” and “marsh grass,” and also “wetlands” and “marsh land.” There appears to be no dispute that the parties use all these terms to refer to the following concepts: otherwise uncultivable land on which, during growing seasons, grass grows that may be readily harvested and that is suitable for sale or productive use on a farm. Going by the arguments of the parties, no more precision than that is needed for these concepts in order for us to resolve this appeal. For these concepts, we will use the phrases “marsh hay” or “marsh hay land.”

¶6 To a small degree, the parties disputed at trial precisely how many acres of the transferred parcel could be said to be marsh hay land. However, James Jordan acknowledged in his testimony that there was, at least at times, marsh hay on the parcel that could amount to seven acres. All that matters for our analysis, given the issues raised on appeal, is that the jury could reasonably have found that approximately seven acres of the parcel constituted marsh hay land at the time of the sale. For the sake of simplicity we refer to it as seven acres of marsh hay land.

¶7 Returning to our chronology, the Jordans sued both Wille and Anderson claiming misrepresentation. The Jordans and Anderson reached a settlement and executed a *Pierringer* release, resulting in the court dismissing Anderson from this action.³ Following Anderson’s dismissal, the Jordans proceeded against Wille on a statutory misrepresentation claim under WIS. STAT.

³ *Pierringer v. Hoger*, 21 Wis. 2d 182, 124 N.W.2d 106 (1963). By virtue of the *Pierringer* release in this case, the Jordans became obligated to defend Anderson in any subsequent related claim. See *Estate of Kriefall v. Sizzler USA Franchise, Inc.*, 2011 WI App 101, ¶¶33, 335 Wis. 2d 151, 801 N.W.2d 781, *aff’d*, 2012 WI 70, 342 Wis. 2d 29, 816 N.W.2d 853.

§ 100.18 (2015-16).⁴ The Jordans alleged that Wille, through Anderson, intentionally misrepresented the number of “tillable versus non-tillable” acres that Wille offered for sale.

¶8 Wille filed a third-party complaint against Anderson, which resulted in Anderson’s return as a party to the action. The third-party complaint alleged in pertinent part that Anderson breached a fiduciary duty to Wille and her duties as a broker under WIS. STAT. § 452.133.

¶9 In advance of trial, the Jordans moved to dismiss Wille’s third-party complaint against Anderson. The court denied this motion on the ground that there was sufficient evidence to support a finding by the jury that Anderson included information about tillable acreage on the MLS sheet that “Wille did not know anything about.” Thus, both the statutory misrepresentation claim of the Jordans against Wille and Wille’s third-party claim against Anderson were tried to a jury.

¶10 As we have explained, the main dispute at trial centered on whether the seven acres of marsh hay land constituted tillable acreage. Based on their view that the answer is no, the Jordans took the primary position that there were only 37.1 tillable acres on the transferred parcel. Wille took the position that all information available to the Jordans reasonably placed them on notice about how much tillable acreage there actually was.

⁴ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶11 James Jordan testified at trial that, in his view, tillable acres are those on which one plants or grows crops, on land which is “fertilize[d],” and which may yield a financial “reward.” James testified that tillable acres do not include the seven acres of marsh hay land on the parcel, although James conceded that marsh hay can be sold at a profit. James also testified to his understanding that the United States Farm Service Agency does not count marsh hay land as tillable.

¶12 Over a relevancy objection at trial, the court allowed Wille to use a definition of tillable acres contained in a publication of the Wisconsin Department of Revenue called the Agricultural Assessment Guide (Rev. 12/2013). More specifically, Wille’s counsel offered the guide into evidence and the court received it. The guide’s definition supported Wille’s theory on the main dispute: tillable acres includes “[m]arsh or other wild land that has never been cultivated, but from which grass is cut” “for use on the farm or for sale.” Wille used the guide in cross-examining James Jordan. In addition, Wille directed the jury’s attention to the guide definition in making arguments.

¶13 Turning to the jury verdicts, regarding the statutory misrepresentation claim, the jury found that Wille made a statement concerning the sale of the parcel that contained “an untrue, deceptive, or misleading assertion” and that Anderson repeated this assertion.

¶14 However, the jury separately found that the Jordans did not suffer a monetary loss as a result of their reliance on the misrepresentation. Because the jury found that the Jordans suffered no damages, the jury did not need to answer the verdict questions related to Wille’s third-party claim, and did not attempt to do so. Based on the finding of no damages, the circuit court entered a judgment

dismissing the action. The Jordans appeal. We reference additional pertinent facts below.

DISCUSSION

¶15 The Jordans argue on appeal that: (1) the circuit court erroneously exercised its discretion at trial by overruling their relevancy objection to the Department of Revenue guide definition that counts marsh hay land as tillable; (2) the court erred in denying a motion to dismiss Wille’s third-party complaint against Anderson; and (3) there was insufficient evidence at trial to support the jury’s verdict that the Jordans did not suffer monetary loss as a result of their reliance on the alleged misrepresentation. We now address each argument in turn.

The Court’s Relevancy Ruling

¶16 The Jordans argue on appeal that the circuit court erred in overruling their relevancy objection to the admission of the guide’s definition of tillable.⁵ The Jordans now argue that the court “improperly placed an imprimatur of legal authority on the defense’s definition of ‘tillable’” as including marsh hay. We reject this argument because it is a mismatch with the objection that the Jordans

⁵ Separately, the Jordans argue that the circuit court erroneously exercised its discretion in not allowing them to introduce into evidence a dictionary definition of the word tillable. However, after the court informed the parties that it would not instruct the jury on *any* definition of tillable, the Jordans withdrew their attempt to admit the dictionary definition. This constitutes a failure by the Jordans to preserve the issue in the circuit court, and for this reason we do not discuss the issue further. See *State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (“Issues that are not preserved at the circuit court ... generally will not be considered on appeal.”). We also observe that even if the Jordans had not forfeited this argument, we would reject it, because the court had a rational basis to exclude the dictionary entry from evidence, based on the failure of the Jordans to provide the court with authority in support of its admission after the court asked for authority.

made at trial, and because the Jordans have nothing of substance to say regarding a discretionary decision of the circuit court that is well supported.

¶17 Decisions regarding the admission of evidence at trial rest within the circuit court's discretion and therefore our review of evidentiary decisions is deferential. *Martindale v. Ripp*, 2001 WI 113, ¶29, 246 Wis. 2d 67, 629 N.W.2d 698. “We will not find an erroneous exercise of discretion if there is a rational basis for a circuit court's decision.” *Id.* (citations omitted).

¶18 After Wille moved for the admission of the definition from the guide, the Jordans objected on the grounds that the guide was not relevant, because “it [is] a tax publication” and the parties' dispute did not involve a tax issue. The court overruled this sole objection to admission of the guide.

¶19 We conclude that there is a mismatch between the sole objection of relevancy made at trial and the “improper imprimatur of legal authority” argument made on appeal. The Jordans have failed to preserve for appeal their current argument, because parties cannot raise an evidentiary objection for the first time on appeal. *See State v. Edwards*, 2002 WI App 66, ¶9, 251 Wis. 2d 651, 642 N.W.2d 537. Further, as we now explain, the court's relevancy ruling had a strong basis and was part of the court's evenhanded approach to the topic of how tillable could be defined.

¶20 The court reasonably concluded that the guide definition did not merely meet the test for relevance, *see* WIS. STAT. § 904.01 (relevant evidence has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”), but could be said to go to the heart of the dispute. The court noted that there is apparently no statutory legal definition of the phrase

tillable acres, and that the court appeared to lack any authority from which to instruct the jury as to what tillable acres means. Given those facts and the nature of the case, the court concluded that the guide definition provided the jury with relevant information in “a slippery area.” The court’s rejection of the relevancy objection is consistent with Wisconsin case law. See *State v. Lindh*, 161 Wis. 2d 324, 348, 468 N.W.2d 168 (1991) (“The criterion of relevancy is whether the evidence sought to be introduced would shed any light on the subject of inquiry.”) (quoted source omitted); *Preston v. Schaefer*, 89 Wis. 2d 1, 6-8, 277 N.W.2d 794 (1979) (upholding the introduction of non-expert and expert testimony in a dispute over alleged misrepresentation of tillable acreage, without adopting a standardized definition of the concept).

¶21 While not essential to our conclusion, we further observe that, at the same time that it made its ruling on the guide, the court informed the parties that it would allow them to offer additional evidence bearing on the definition of tillable acreage, including allowing the parties to testify regarding their subjective understandings of what tillable acres meant to them at the time of the sale. As referenced above, the court allowed James Jordan to testify to his belief that the federal Farm Service Agency would exclude marsh hay when classifying tillable acres, over Wille’s objection, and also allowed James to give opinion testimony regarding his personal understanding of what tillable meant to him at the time of the sale.

Denial of the Motion to Dismiss the Third-Party Complaint

¶22 The Jordans argue that the circuit court erred in denying their motion to dismiss Wille’s third-party complaint against Anderson because the complaint “failed to state a cause of action” and is therefore legally insufficient. They

contend that they are aggrieved by this decision because the jury was likely to have been confused by the presence of Anderson as a party at trial. Although we are not persuaded that there is reason to think that inclusion of Anderson as a party at trial caused confusion, we will nonetheless assume for purposes of the following discussion that the Jordans could have been aggrieved by the decision, and resolve this issue based on our conclusion that the circuit court had a basis to deny the motion to dismiss because the third-party complaint sufficiently alleged that Anderson breached her fiduciary duty and her statutory duties under WIS. STAT. ch. 452.

¶23 On review of a motion to dismiss, which we conduct de novo, we consider the legal sufficiency of the complaint. *Lane v. Sharp Packaging Sys., Inc.*, 2001 WI App 250, ¶15, 248 Wis. 2d 380, 635 N.W.2d 896 (citation omitted). When reviewing a complaint’s sufficiency, “we examine whether it contains sufficient details to give the defendant and the court a fair idea of what the plaintiff is complaining about.” *Wolnak v. Cardiovascular & Thoracic Surgeons of Cent. Wis., S.C.*, 2005 WI App 217, ¶48, 287 Wis. 2d 560, 706 N.W.2d 667. We assume that the facts alleged in the complaint are true and liberally construe the pleadings. *Lane*, 248 Wis. 2d 380, ¶15. Dismissal at the pleading stage is proper only if it is clear that under no conditions can the non-moving party recover. *Id.*

¶24 Assuming as true the facts in the third-party complaint, we conclude that Wille alleged sufficient facts to state a claim that, by virtue of the real estate listing contract between Anderson and Wille, Anderson breached both her fiduciary duties to Wille and her statutory duties as a real estate broker and that Anderson’s alleged breaches caused any injuries that the Jordans alleged to have suffered.

¶25 The Jordans argue that the third-party complaint fails to state a claim upon which relief can be granted because Anderson and Wille had a contractual relationship and the economic loss doctrine generally prohibits parties suing pursuant to a contract from imposing tort liability on the other party to the contract. This argument fails because it neglects to account for the fact that, when we review a decision on a motion to dismiss rather than merely considering the relationship between the parties, we look to the pleadings and whether the pleadings state a valid claim for relief. *See Lane*, 248 Wis. 2d 380, ¶15. As discussed below, the third-party complaint does not allege tort claims, but rather alleges a breach of fiduciary duty and a breach of statutory duty, both stemming from Anderson's obligations to Wille pursuant to the listing contract. *See Digicorp, Inc. v. Ameritech Corp.*, 2003 WI 54, ¶34, 262 Wis. 2d 32, 662 N.W.2d 652 (economic loss doctrine bars tort claims, not contract claims); *Below v. Norton*, 2008 WI 77, ¶7, 310 Wis. 2d 713, 751 N.W.2d 351 (2008) (citation omitted) (economic loss doctrine does not apply to statutory claims). Thus the economic loss doctrine did not bar Wille from pursuing her third-party claims against Anderson.

¶26 We also reject the argument of the Jordans that Wille's third-party complaint was not legally sufficient to survive a motion to dismiss. As Wille correctly observes, the third-party complaint attaches and incorporates by reference the amended complaint of the Jordans and Wille's answer. In the amended complaint, the Jordans did not allege that Wille directly misrepresented the tillable acreage but instead that Anderson did so while acting as Wille's agent. Thus in her third-party complaint, Wille alleges that Anderson provided contractual services to her as a licensed real estate broker and, in so doing,

Anderson breached her fiduciary duty to Wille and her statutory duties under WIS. STAT. ch. 452.

¶27 Regarding Wille’s common-law breach of fiduciary duty claim, the third-party complaint alleges that Anderson provided services to Wille pursuant to a contract, that Anderson owed Wille a duty as her real estate broker, that Anderson breached that duty to Wille, and that any damages that the Jordans may have suffered in this action were due to Anderson’s breach of her duty. This incorporates each element of a breach of fiduciary duty, stating a claim for breach of fiduciary duty sufficient to withstand a motion to dismiss. *See Berner Cheese Corp. v. Krug*, 2008 WI 95, ¶40, 312 Wis. 2d 251, 752 N.W.2d 800 (citing *Reget v. Paige*, 2001 WI App 73, ¶12, 242 Wis. 2d 278, 626 N.W.2d 302) (“The elements of a claim for breach of fiduciary duty are: (1) the defendant owed the plaintiff a fiduciary duty; (2) the defendant breached that duty; and (3) the breach of duty caused the plaintiff’s damage.”).

¶28 Regarding Wille’s claim under WIS. STAT. ch. 452, the third-party complaint alleges that the statutes imposed certain duties on Anderson as a real estate broker and that Anderson breached those duties. *See* WIS. STAT. § 452.133 (establishing the statutory duties of a broker or brokerage firm to a party to a real estate transaction). The Jordans argue that WIS. STAT. § 452.139(2)(a), which provides that a client of a real estate broker is not liable for misrepresentations made by the broker “unless the client knows or should have known of the misrepresentation or the [broker] is repeating a misrepresentation made by the client,” renders invalid Wille’s third-party complaint against Anderson. Because Wille and not Anderson was responsible for the misrepresentation, the argument proceeds, the court should have granted the motion to dismiss the third-party complaint. We reject this argument for the same reason that we reject the

arguments on the breach of fiduciary duty claim: assuming the truth of the allegations in the third-party complaint, Wille properly pleads a violation of WIS. STAT. ch. 452 in the complaint, regardless of the theory of the case advanced by the Jordans.⁶

Sufficiency of the Evidence to Support the Jury's Verdict

¶29 The Jordans argue that the evidence presented at trial was “insufficient” to support the jury’s determination that they did not sustain monetary damages as a result of their reliance on the misrepresentation. The Jordans ask us to remand this action to the circuit court with instructions that the court change the jury verdict of no damages and determine the amount of damages suffered by the Jordans based on what they argue is the only pertinent evidence presented.

¶30 We begin by questioning whether the Jordans present a true sufficiency of the evidence argument. Rather than argue that the evidence is insufficient to support the no damages verdict, the Jordans effectively argue that the evidence was *so sufficient* that the jury could not reasonably fail to award damages. The Jordans ask us to take the decision away from the jury and ourselves impose a particular damages award. Although we question the legal basis for the purported sufficiency argument of the Jordans, neither party

⁶ On a related point, the Jordans argue that, even if the circuit court properly denied the motion to dismiss, it should have granted their request for partial summary judgment capping Anderson’s potential liability to that arising from the 44/42 acre discrepancy on the MLS sheet. We reject this argument because the Jordans fail to explain why we should not conclude that there were material facts in dispute pertinent to the question of whether Anderson was wholly or partially responsible for the 44/42 discrepancy, or for that matter at least partly responsible for the main dispute over the tillable nature of marsh hay land.

addresses this topic and we decline to discuss it further. Rather, we will assume, without deciding, that the Jordans present a viable sufficiency of the evidence argument and address it on that basis.

¶31 We reject this request to instruct the circuit court to change the no damages verdict to a verdict for a particular amount of damages for two reasons. First, the Jordans fail to persuade us that we should address this argument despite their failure to give the circuit court an opportunity to address it in a postverdict motion. Second, even if we were to address the argument, we would conclude that there was sufficient evidence to support the no damages verdict answer.

¶32 Addressing first the forfeiture topic, WIS. STAT. § 805.14(5)(c), which governs motions after verdict, provides that “[a]ny party may move the [circuit] court to change an answer in the verdict on the ground of insufficiency of the evidence to sustain the answer.” The Jordans did not file a postverdict motion to change the jury’s answer and, as a result, Wille asks us to deem the issue forfeited.

¶33 We observe that WIS. STAT. § 805.14 does not explicitly state that postverdict motions must be filed in order to preserve the right to challenge a jury verdict on appeal based on the sufficiency of the evidence. However, our supreme court has indicated that the failure to timely raise issues in a postverdict motion may affect the party’s ability to raise the issues as of right on appeal. *See Hartford Ins. Co. v. Wales*, 138 Wis. 2d 508, 510-11, 406 N.W.2d 426 (1987). Nevertheless, in such cases, the court held, an appellate court may use its discretionary power to review such issues. *Id.* The court recently reiterated this principle, stating that failure to file a postverdict motion “‘limits the issues that may be asserted as a matter of right on the appeal.’” *Kimble v. Land Concepts*,

Inc., 2014 WI 21, ¶41, 353 Wis. 2d 377, 845 N.W.2d 395 (citing *Wales*, 138 Wis. 2d at 510-11). In *Kimble*, the court exercised its power to review an issue despite the fact that it was not raised in a postverdict motion. Here, however, the Jordans fail to provide us with any reason that we should do so, and nothing about the circumstances appears to call for us to do so.

¶34 Second, even if we were to consider the sufficiency argument, it would readily fail on the merits. Trial evidence supported a reasonable inference that it was unreasonable for the Jordans to rely on any misrepresentation about the number of tillable acres on the parcel, given signs available to the Jordans that the parcel might not contain the 44 tillable acres that the Jordans say they expected. Moreover, even if the jury found that the Jordans reasonably relied on the misrepresentation, evidence presented at trial was sufficient to support a finding that the parcel in fact contained 44 tillable acres, when the seven acres of marsh hay land is included.

¶35 “In reviewing the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the jury’s verdict,” sustaining the verdict if there is trial evidence to support it. *K & S Tool & Die Corp. v. Perfection Machinery Sales, Inc.*, 2006 WI App 148, ¶46, 295 Wis. 2d 298, 720 N.W.2d 507, *aff’d*, 2007 WI 70, 301 Wis. 2d 109, 732 N.W.2d 792. When more than one reasonable inference can be drawn from the admissible evidence, we accept the inference drawn by the trier of fact, in this case, the jury. See *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 249-50, 274 N.W.2d 647 (1979) (citations omitted).

¶36 At trial, the Jordans testified that they based their offer to purchase on differing per acre values for tillable versus non-tillable acreage, offering \$2000

per non-tillable acre and \$6500 per tillable acre. Based on this testimony, the Jordans now argue that, if the jury found a misrepresentation based on their expectation of 44 acres of tillable, non-marsh hay land, jurors were obligated to find that the Jordans lost \$4500 on each of the non-tillable seven acres of marsh hay land.

¶37 In response, Wille argues that, at a minimum, admissible evidence supported a reasonable inference that the Jordans should not have relied on their expectation of 44 tillable acres, and should have attempted to verify the information themselves, which would support the jury finding of no damages. As we now explain in more detail, we agree with Wille.

¶38 The circuit court properly instructed the jury to consider, in the event that they found a misrepresentation, whether reliance on the misrepresentation by the Jordans was reasonable in determining whether the representation materially induced the monetary loss. *See* WIS. JI—CIVIL 2418; *Novell v. Migliaccio*, 2008 WI 44, ¶50, 309 Wis. 2d 132, 749 N.W.2d 544 (quoting *K & S Tool & Die*, 301 Wis. 2d 109, ¶36) (“[T]he reasonableness of a plaintiff’s reliance may be relevant in considering whether the representation materially induced the plaintiff’s pecuniary loss”).

¶39 As Wille points out on appeal, the fact that there was a discrepancy in tillable acreage amounts reflected on the MLS sheet (42 versus 44) could reasonably be seen as giving warning to the Jordans that the MLS sheet might not be accurate on this topic. Nonetheless, James testified that the MLS sheet was the only source that the Jordans consulted for tillable acreage information on the parcel before making their offer to purchase. James acknowledged at trial both that there were ready sources of public information about the amount of tillable

acreage on the parcel (for example, the Farm Service Agency tillable acreage records) and that he took no steps to avail himself of such information. This evidence was sufficient to support a jury finding that the Jordans failed to meet their burden of showing that reasonable reliance on any misrepresentation about the number of tillable acres materially induced their monetary loss.

¶40 Separately, as summarized above, the Jordans acknowledged at trial both that the parcel contained 37.1 tillable acres, and that there were up to seven acres of marsh hay land beyond the 37.1 acres. If the jury decided, as it reasonably could have done, to credit evidence that included the guide definition discussed above, adding the 37.1 acres to the seven acres easily exceeds the 42 acres set forth in one section of the MLS sheet and roughly equals the 44 set forth elsewhere on the sheet. From this evidence, it would have been reasonable for the jury to conclude that the Jordans suffered no damages as a result of their reliance on any misrepresentation alleged by the Jordans.

¶41 The Jordans rely on one misrepresentation case in purported support of their sufficiency argument, *see Fricano v. Bank of America, NA.*, 2016 WI App 11, 366 Wis.2d 748, 875 N.W.2d 143 (upholding jury verdict in misrepresentation case as sufficiently supported by the evidence), but fail to explain why any statement in *Fricano* undermines the jury's verdict of no damages.

CONCLUSION

¶42 We affirm because we conclude that the circuit court did not erroneously exercise its discretion in overruling the relevancy objection to admission of the guide, the court had a basis to deny the motion of the Jordans to dismiss Wille's third-party complaint against Anderson, and the Jordans failed to

preserve their challenge to the jury's verdict of no damages, which was in any case supported by sufficient evidence, assuming without deciding that sufficiency-of-the-evidence standards apply.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

